IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5453 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? - : NO

2. To be referred to the Reporter or not? Yes. : -

3. Whether Their Lordships wish to see the fair copy of the judgement? - : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? - : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SOCIETY OF SISTER OF ST ANNS

Versus

STATE OF GUJARAT

Appearance:

MR BR GUPTA for Petitioner

MR SK PATEL for Respondent No. 1

MR MAULIN R RAVAL for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 02/05/2000

ORAL JUDGEMENT

#. This petition has been filed for quashing and setting aside the action of denying exemption from payment of education cess and general tax to the petitioner society's Primary and High School premises at Sabarmati in Ahmedabad city, by holding and declaring that their impugned action is contrary to law and breach

of the mandate contained in Article 14 of the Constitution of India for meeting out different treatment to persons or class of persons similarly situated in law.

#. The petitioner is a society of sisters of St. Anns, which is a public trust and registered under the Bombay Public Trusts Act, 1950 with the Charity Commissioner, Ahmedabad Region, Ahmedabad. The petitioner society is also registered under the Societies' Registration Act, 1860. The objects of the petitioner's society are charitable within the meaning thereto in Section 2 (15) of the Income-tax Act, 1961 or any statutory modification, amendment or replacement thereof from time to time. The main objects of the petitioner' society are as under :

(i) To establish, conduct, maintain, administer, promote, organize and carry on medical and educational institutions, programmes, schemes, works and activities for the benefits of all people.

(ii) To establish, manage and maintain elementary secondary middle and high schools.

(iii) To promote, maintain, control, conduct, support or subscribe to any Society, Association or Institution having objects altogether or in any part similar to the objects of the petitioner's Society or otherwise deemed beneficial to the petitioner' society.

(iv) To do or to be done any or all such acts or things as shall be conductive and necessary to the promotion of the charitable objects for the benefit of all people of India.

#. The petitioner's society owns and runs primary and high schools at Sabarmati area of Ahmedabad city. It is stated that the petitioner's society is registered under the Bombay Public Trusts Act, 1950 and its activities carried on are for a charitable purposes and hence it is entitled to exemption from the payment of general tax u/s 132 of the Bombay Provincial Municipal Corporation Act, 1948 (hereinafter referred to as BPMC Act). The petitioner also sought exemption from payment of education cess u/s 12 of the Gujarat Education Cess Act, 1962 and general tax u/s 132 of the BPMC Act.

Section 3 of the Gujarat Education Cess Tax Act, provides that for the cause of promoting education in the State there shall be levied and collected in accordance with the provisions of the Act Education Cess which shall consist of ;

(a) A surcharge on all land except lands which are included within the village site and not assessed to land revenue;

(b) A tax on land and buildings in the urban area.

#. Section 12 of the said Act provides for levy and collection with effect from 1st day of April 1970 a tax on land and building situated in the urban area at the rates mentioned therein, and used for the purpose of trade, commerce, industry etc. Section 13 of the said Act relates to exemption from levying and collection of education cess on certain lands and buildings mentioned therein. U/s 13 (3) the State Government has been empowered, if it considers it necessary to do so in the public interest, exempt from payment of the tax u/s 12 of the Act on any building or land or any class of buildings or land by issuance of Notification in the official gazette of the State to that effect. Section 15 of the Act provides that in the urban areas the tax u/s l2 thereof shall be collected by the concerned local authorities. The Government has issued the notification dated 24-12-1963 exempting from payment of tax u/s 12 of the Act, the class of building as specified therein. By the notification dated 24-12-1983 the Government of Gujarat is empowered to exempt from payment of tax u/s 12 of the Act on any building or land or portion thereof solely occupied and used for public worship or for a public charitable purpose and it will be for public trust and registered under the Bombay Public Trusts Act, 1950 or for a society registered under the Societies' Registration Act. But the buildings or lands or portion thereof in which any trade or business is carried on or building or lands or portion thereof in respect of which rent is deprived, where such rent is or is not applied solely to religious or charitable purposes will not be deemed to be solely occupied and used for public worship or public a charitable purpose within the meaning of Class 2. The petitioner has made various applications dated 6-2-1992, 9-2-1992, 3-5-1993, 15-11-1993, 16-3-1998, 21-4-1998, 22-4-1998 and 7-7-1998. The petitioner also made necessary representation on 16-3-1998 to the respondent no. 1 as well as to the Collector of Ahmedabad and the Controller of

Municipalities Ahmedabad seeking exemption from payment of education cess and general tax in respect of its Primary and High Schools. It is also stated that certain other educational institutions similarly situated educational institutions have been granted exemption from payment of education cess and general cess. Hence, the petitioner is also entitled to the exemption from payment of education cess and general tax. The respondents' action, conduct and attitude are contrary to the relevant statutory provisions of Section 12 and 18 of the Education Cess Act and u/s 132 of the BPMC Act. As such, the act of the respondents is arbitrary, discriminatory, illegal and contrary to the mandate contained in Article 14 of the Constitution of India and hence this petition.

#. The respondent no. 2 has filed the affidavit-in-reply raising preliminary objection that the Division Bench of this Court has held that the question whether the petitioner is entitled to the benefits u/s 132 of the BMPC Act is one which should have been decided by the Judge, Small Causes Court and a favourable decision is not obtained then the petitioner can agitate that question before this Hon'ble Court u/s 411 of the BPMC Act. As such, this petition is not maintainable. It is further stated that the petitioner's property is not being used solely for the public charitable purpose and the school run by the petitioner's society cannot be said to be occupation and/or use for public a charitable purpose. The school is run with a view to make profit and hence those activity carried on in the name of trade and/or business. The property is not owned by the petitioner. Hence, the petitioner's society is not entitled to any exemption. Under Section 132 (i) of the BPMC Act, general tax is required to be levied in respect of the building and land or portion thereof solely occupied or used for public worship or for charitable purpose. The building or land or portion thereof in which trade or business is carried on is not exempted.

#. The petitioner has not placed any material on record to show that the said property is being used for a charitable purpose. Any land or building by use of which if any income or profit is derived then it cannot be said to be used for a charitable purpose. If the petitioner has no right then no mandate can be issued seeking exemption. There is no material on record regarding the institutions which have been granted exemptions. Unless and until all the materials are on record and it is shown that the other institutions are similarly situated have been exempted, the petitioner is entitled for those exemptions. But in the instant case, no material has

been produced before this Court to show that the petitioner's society is also similarly situated institution to those institutions which have been granted exemption. The petitioner and its institutions are having huge income and are holding fixed deposits in the different Banks and are earning interest and income from several heads including the fees for admission, tuition fee, term fee, craft fee etc. The total of such profits/income derived by the management comes Rs. 21,732/- for the year 31-3-1996. The activities of the petitioner's society in running the educational institutions do not come within the meaning of the activities for charitable purpose. The petition is vexatious, without any material on record, without any justifiable cause dragged into such frivolous litigations. Hence, the respondents are entitled for exemplary cost to be paid by the petitioner to the respondents.

#. The main contention of the learned counsel for the petitioner is that lands or buildings which are being used by the petitioner's society in running the educational institutions are being used only for charitable purpose as the society has been registered under the provisions of the Bombay Public Trusts Act, 1950 with the Charity Commissioner, Ahmedabad Division, Ahmedabad. As such, under notification the petitioner is entitled for exemption from the payment of general tax and education cess and the institutions similarly situated have been granted exemption and discrimination is violative of mandate contained in Article 14 of the Constitution of India.

#. Learned counsel for the respondent submitted that the petitioner's society is running primary and high schools. He has filed Annexure-A statement of income and expenditure of primary section for the year ended on 31-3-1996 which shows that excess of income over expenditure is Rs. 21,732/-. This statement Annexure-A also shows the interest amount of Rs.11,773/-. In this respect he has contended that this is one of the sister concern of St. Anns. of the petitioner society which is making profit and earning income. The petitioner has not filed any statement of income and expenditure of other high schools and other primary sections which are being run by the petitioner's society. Thus, it cannot be said that the property, building or land are being used for a charitable purpose. In other words, the contention of the learned counsel for the respondent is that the petitioner is earning income from those institutions. As such, the properties where the educational institutions

are being run by the petitioner's society are not liable to be exempted and no exemption can be granted to the petitioner.

#. Second contention of the learned counsel for the respondents is that there is great delay from the date of making the application in the year 1991. Thereafter some correspondence was made and then the representation has been made in the year 1998 after about eight years. On the ground of delay, latches, acquiescence this petition is liable to be dismissed and the respondents are entitled to exemplary costs.

##. Learned counsel for the petitioner referred to the words "charitable purpose". From the decision of the Supreme Court in the case of Hyderabad Municipal Corporation Vs. Hyderabad Race Club, reported in AIR 1987 SC 92, wherein the observation of the Apex Court is that High Court has completely failed to realize that the 'occupation' of land and buildings or the 'user' of the land and buildings must be for a "charitable purpose' and that it is altogether irrelevant as to the manner in which the income of the club is utilized. Section 202 (1) (b) makes no reference to the question as regards the employment of the income of the club or the purpose for which the income is so employed. Exemption is granted only in respect of buildings which are 'solely' used, meaning thereby exclusively used, for charitable purpose. For instance, if the premises are occupied for the purpose of benevolent activities such as the running of a free dispensary or clinic or for running of a free school for the children, such user of the building would constitute a user for a charitable purpose and entitle the owner of the building to claim exemption. If one were to take the most 'charitable' view as regards the meaning and content of expression 'charitable' conducting of horse races or training of horses for the races cannot be said to be charitable activity. Expression charitable in the context of S. 202 (1) (b) means a benevolent activity calculated to benefit the poor or the deprived.

##. On the basis of the observation of the Apex Court in the aforesaid decision of the Supreme Court, learned counsel for the petitioner contended that in case the property or building or land is not utilized for a charitable purpose exemption cannot be granted. Secondly, charitable purpose is to give benefit to poor and deprived persons. In the present case, the society is charging huge amount under different heads and no activity is being conducted to give benefits to the poor or deprived persons. As such, the property does not come

within the meaning of charitable purpose. As such, the petitioner is not entitled to any exemption.

##. Learned counsel for the petitioner also referred to the letters dated 15-3-98, 7-7-98 and 22-4-98 to show that the petitioner's society is owner and occupier of the property for running the institutions. But in the Annexure-I statement of income and expenditure the amount of Rs.72,000/- has been shown as building rent. Meaning thereby is that the petitioner's society is misappropriating the fund of the society in the name of building running though they are exclusively owners of the property.

##. I have considered the rival contentions of the learned counsel for the parties and perused the material on record and relevant provisions of the law.

##. The petitioner has not placed any material on record to show that the property which is being used by the petitioner's society for running the educational institutions is being solely used for a charitable purpose. The contention of the learned counsel for the petitioner is that the society has been registered under the Bombay Public Trusts Act, 1950 and hence it will be presumed that the entire property of the petitioner society is being solely used for charitable purpose is not tenable. As such, the petitioner is not entitled for any exemption unless he proves that the property of the petitioner's society is used for running the institutions is being solely used for a charitable purpose and the contention that the petitioner's society has been registered as charitable trust is not sufficient to hold that the property of the petitioner's society is being solely used for a public charitable purpose. Moreover, it is a question of fact which can be determined only by the concerned Court as laid down by the Division Bench of this Court in the case of Gujarat Vidya Sabha Vs. Municipal Corporation of the city of Ahmedabad reported in 1995 (1) G.L.R. 419 wherein this Court has taken a view that the question whether the appellant was entitled to the benefit of the provisions of section 132 was one which should have been decided by the Small Causes Court, Ahmedabad and a favourable decision not having been obtained, the appellant can agitate that question before this Court under section 411 of the BPMC Act.

##. Whether the property of the petitioner's society running for educational institutions is being solely used for charitable purpose is a question of fact which can be decided on the basis of the evidence to be led by the

parties before the Court concerned. There is nothing on record to show that the property of the petitioner's society for running the educational institutions is being solely used for a charitable purpose. As such, the petitioner is not entitled to any exemption. On the other hand, the statement of income and expenditure filed by the respondent is in respect of primary section. The petitioner's society is running primary as well as high schools. As such, there must be separate statement of income and expenditure of each of the institutions. The statement of income and expenditure of the primary section clearly shows that the primary institutions is earning and making profit from the institutions and it has not been mentioned in the statement of income and expenditure of primary section that what was the amount of income and expenditure of the previous years and what is the amount which is deposited in different Banks. It appears from the letters filed by the petitioner along with the petition that they they are exclusive occupier and owners of the property of the petitioner's society which is being used for running the educational institutions as it is evident from the statement of the income and expenditure of primary section that they are charging building rent. As such, the petitioner has not come with clean hands before this Court

##. The Charity Commissio Ahmedabad Regionner, Ahmedabad is directed after giving reasonable opportunity of hearing to the parties to decide as to whether the property in dispute which is being used for running the educational institutions is being solely used for charitable purpose, if not, then it will be deemed that the petitioner's society is running the business for earning and benefits.

##. I have carefully considered the rival contentions raised by the learned counsel for the parties and and perused the material on record. I do not find any merit in this petition and hence the same is liable to be dismissed. Accordingly, this petition is dismissed. Rule is discharged, with no order as to costs. Interim relief, if any, stands vacated.

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/JVSatwara/